

Exhibit 6

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In the Matter Of:

EMILY FORSYTHE vs

WAYFAIR, LLC

CANDICE SMITH

September 02, 2020



<p>1 EXHIBIT INDEX</p> <p>2</p> <p>3 No. Description Page</p> <p>4</p> <p>5 Exhibit 1 Emily Forsythe --84</p> <p>Written Complaint</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>5</p> <p>7</p> <p>1 Wayfair?</p> <p>2 A. Yes.</p> <p>3 Q. All right. How long have you been</p> <p>4 employed by Wayfair?</p> <p>5 A. Six Years.</p> <p>6 Q. What is your title?</p> <p>7 A. Director of Talent Management for</p> <p>8 field locations.</p> <p>9 Q. Nationwide?</p> <p>10 A. Globally.</p> <p>11 Q. How many -- how many facilities</p> <p>12 outside of the United States does Wayfair</p> <p>13 have, approximately?</p> <p>14 A. Six, I think.</p> <p>15 Q. Have you held that position for the</p> <p>16 entire last six years?</p> <p>17 A. No.</p> <p>18 Q. And have you been located in</p> <p>19 Washington State for the entire last six</p> <p>20 years?</p> <p>21 A. No.</p> <p>22 Q. Okay. Where were you before you</p> <p>23 moved to Washington State?</p> <p>24 A. Salt Lake City, Utah.</p> <p>25 Q. All right. And is that where you</p>
<p>6</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are on</p> <p>3 the record at approximately 9:34 a.m., on</p> <p>4 September 2nd 2020. My name is</p> <p>5 Icelsa Garcia. I will be the</p> <p>6 videographer for today's deposition.</p> <p>7 Will the court reporter please swear</p> <p>8 in the witness.</p> <p>9 MR. GOODMAN: Robert Goodman,</p> <p>10 for plaintiff, Emily Forsythe.</p> <p>11 MS. MILLER: Emily Miller,</p> <p>12 for defendant, Wayfair.</p> <p>13 CANDICE SMITH</p> <p>14 Having been duly sworn testified as follows:</p> <p>15 EXAMINATION BY MR. GOODMAN:</p> <p>16 Q. Ms. Smith, are you using the</p> <p>17 headphones as your microphone?</p> <p>18 A. I am. Yes.</p> <p>19 Q. I may ask you to make an adjustment,</p> <p>20 if we discover there are problems. But that</p> <p>21 does not say -- not to do something different,</p> <p>22 which you may not have; but sometimes, even a</p> <p>23 little shift can help improve the audio</p> <p>24 quality.</p> <p>25 Are you currently employed by</p>	<p>8</p> <p>1 started with Wayfair?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And how long have you been in</p> <p>4 Washington State?</p> <p>5 A. Two and a half years.</p> <p>6 Q. You're in Spokane? Seattle? Where</p> <p>7 are you?</p> <p>8 A. Technically, Pasco, Washington;</p> <p>9 which is the tri-cities area.</p> <p>10 Q. And the tri-cities are?</p> <p>11 A. Pasco; Kennewick; Richland.</p> <p>12 Q. Okay. How old are you?</p> <p>13 A. Forty-three. Have to do the math.</p> <p>14 Q. All right. Did you graduate from</p> <p>15 college?</p> <p>16 A. No.</p> <p>17 Q. And where'd you go to high school?</p> <p>18 A. New Mexico. Albuquerque, New</p> <p>19 Mexico.</p> <p>20 Q. I am from El Paso. So we have that</p> <p>21 in common.</p> <p>22 A. Oh, yeah.</p> <p>23 Q. And between high school and your job</p> <p>24 with Wayfair, where did you work?</p> <p>25 A. You want to know all of them?</p>

<p>33</p> <p>1 But you can answer.</p> <p>2 A. No.</p> <p>3 Q. Ms. Forsythe asked for a personal</p> <p>4 day off, on the Friday before the Tuesday,</p> <p>5 where she was planning to go to Atlanta on the</p> <p>6 business trip. Correct?</p> <p>7 A. I don't know.</p> <p>8 Q. Nobody told you that?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Do people who are no longer employed</p> <p>11 by Wayfair need to ask permission for a PTO,</p> <p>12 the day after they cease their employment?</p> <p>13 A. No.</p> <p>14 Q. That doesn't make any sense at all,</p> <p>15 does it?</p> <p>16 A. Well, in this circumstance, if</p> <p>17 you -- like, if you resign, typically, you</p> <p>18 give notice. So, there would be a situation</p> <p>19 where you would resign and still be working</p> <p>20 for the company.</p> <p>21 Q. Okay. But that's not what's</p> <p>22 being -- even being claimed here, is it?</p> <p>23 MS. MILLER: I'm going to</p> <p>24 object to the form.</p> <p>25 A. I believe that it is being claimed</p>	<p>35</p> <p>1 Q. Ma'am, she didn't give a notice</p> <p>2 period, did she?</p> <p>3 A. She asked for severance, which, in</p> <p>4 our world is resigning. And working through</p> <p>5 that process takes time.</p> <p>6 Q. Objection. Responsiveness. She did</p> <p>7 not specify any notice period of minutes;</p> <p>8 hours; days; weeks; or months, using those --</p> <p>9 MS. MILLER: Objection. Asked</p> <p>10 and answered.</p> <p>11 Q. Using those words, did she?</p> <p>12 A. I wasn't there. So I don't know the</p> <p>13 exact conversation.</p> <p>14 Q. And you haven't been told that she</p> <p>15 gave any notice of specific number of minutes;</p> <p>16 hours; days; weeks; or months, either, have</p> <p>17 you?</p> <p>18 A. I don't think that she would have</p> <p>19 had to give specifics, because we were working</p> <p>20 through her resignation period.</p> <p>21 Q. Okay. You're saying she wouldn't</p> <p>22 have had to do it, but she, in fact -- nobody</p> <p>23 has told you that she did do it. Correct?</p> <p>24 A. Not a specific amount of time, as we</p> <p>25 worked through her resignation.</p>
<p>34</p> <p>1 that she was resigning.</p> <p>2 Q. Ma'am, the example you just gave</p> <p>3 said resigning -- the hook you gave was</p> <p>4 "notice." You have never heard from anybody</p> <p>5 that Ms. Forsythe used the word,</p> <p>6 "resignation." Right?</p> <p>7 A. Used that word; no.</p> <p>8 Q. Or that she gave any specific number</p> <p>9 of days, or weeks, of notice. Right?</p> <p>10 A. Specific days, no.</p> <p>11 Q. Specific hours. She didn't give</p> <p>12 specific hours; or weeks; or months; or years.</p> <p>13 Did she?</p> <p>14 A. Well, I think we were working</p> <p>15 through her resignation, which was</p> <p>16 undetermined, as far as the timeline.</p> <p>17 Q. She didn't give notice of a specific</p> <p>18 number of minutes; hours; days; weeks; or</p> <p>19 months, did she?</p> <p>20 MS. MILLER: Bob, asked and</p> <p>21 answered. Object -- objection. Asked</p> <p>22 and answered.</p> <p>23 Q. Okay. You can answer.</p> <p>24 A. We were working through her notice</p> <p>25 period, as she was resigning.</p>	<p>36</p> <p>1 Q. All right. Did you -- did you talk</p> <p>2 to anybody about her Thursday conversation</p> <p>3 with Mr. Shaffer-Figueroa, but</p> <p>4 Mr. Shaffer-Figueroa?</p> <p>5 A. Can you clarify what her Thursday</p> <p>6 conversation was?</p> <p>7 Q. A conversation where you claim -- or</p> <p>8 Wayfair claims -- that somehow, she resigned</p> <p>9 without giving a notice period; without using</p> <p>10 the word "resign." That conversation.</p> <p>11 MS. MILLER: I'm going to</p> <p>12 object.</p> <p>13 And to the extent that you're</p> <p>14 talking about conversations that you had</p> <p>15 with counsel, Candice, I'm going to</p> <p>16 direct you not to answer, as</p> <p>17 attorney/client privileged conversations.</p> <p>18 A. I did talk with Marcie Axelrad and</p> <p>19 Mike Barent, related to this situation.</p> <p>20 Q. Okay. I know Mr. Barent is an</p> <p>21 attorney. Is Ms. Axelrad an attorney?</p> <p>22 A. Yes.</p> <p>23 Q. Did you talk to them --</p> <p>24 A. I don't know what her clarification</p> <p>25 is. I know she has practiced in the past.</p>

<p>37</p> <p>1 Q. Excuse me? 2 A. I don't know if she's -- like, has 3 an active license to practice. I know she has 4 practiced as an attorney in the past. 5 Q. Okay. Where is she located? 6 A. Boston. 7 Q. And she told you that she had a 8 license in the past? 9 A. She told me that she's practiced in 10 the past. 11 Q. Okay. When did you first talk to 12 Mr. Shaffer-Figueroa about this -- what we've 13 identified as the "Thursday conversation?" 14 Did you talk to him on that Thursday; or the 15 next day; or the Saturday; or Sunday; or 16 Monday; or Tuesday? 17 A. I'm pretty sure it was that Thursday 18 afternoon. 19 Q. Did you talk to anybody else about 20 Mr. Shaffer-Figueroa's Thursday conversation, 21 with Ms. Forsythe, on Thursday, before 22 midnight, beside Mr. Shaffer-Figueroa? 23 A. I don't remember when I had the 24 conversation with Mike and Marcie. If it was 25 Thursday or Friday.</p>	<p>39</p> <p>1 Woody? 2 MS. MILLER: Object to the 3 form. 4 But you can answer. 5 A. I don't specifically remember. 6 Q. Okay. And Mr. McKnight and 7 Mr. Woody were the chain of command for 8 Ms. Forsythe at the time. Correct? 9 A. Yes. 10 Q. Is it customary, in Wayfair, for -- 11 have you ever heard of individuals at Wayfair 12 being terminated without the knowledge of 13 their immediate supervisor, or the immediate 14 supervisor's superior? 15 A. Yes. 16 Q. Okay. What were the circumstances? 17 A. I know that we've done 18 investigations -- I think I've specifically 19 done investigations where I've talked to 20 somebody at a very senior level -- a director 21 or above -- to inform them of the expectation 22 that we were going to separate employment, 23 without informing their direct manager, or 24 their manager's manager. 25 It would be several levels above</p>
<p>38</p> <p>1 Q. Okay. Who initiated that 2 conversation? 3 A. Which one? 4 Q. Any conversation you had with 5 Axelrad or Barent? 6 A. I initiated the conversation. 7 Q. Do you know why Ms. Forsythe was 8 told, on Tuesday morning, not to go on the 9 business trip to Atlanta? 10 A. I don't. 11 Q. Do you know of any communications 12 between Thursday, when you spoke to 13 Mr. Shaffer-Figueroa, and Tuesday morning, 14 when she was told not to go to Atlanta, with 15 Cory McKnight, or Matt Woody? 16 A. I had a conversation with Mike and 17 Marcie related to the situation. 18 Q. I don't think you understood my 19 question. Between Thursday, when you spoke to 20 Mr. Shaffer-Figueroa, and Tuesday morning, 21 when Ms. Forsythe was told not to go to 22 Atlanta, are you aware of any conversation 23 about Ms. Forsythe, between you and 24 Mr. McKnight, and Ms. -- or Mr. Woody; or 25 between Shaffer-Figueroa, and McKnight, and</p>	<p>40</p> <p>1 them. 2 Q. Do you -- did you inform Mr. Woody's 3 superior, at any time, between Thursday, when 4 you spoke to Mr. Shaffer-Figueroa, or Tuesday, 5 when Ms. Forsythe was told not to go to 6 Atlanta? 7 MS. MILLER: Object to the 8 form. 9 A. I don't -- I don't believe I had a 10 conversation with his manager between that 11 time. 12 Q. And who was it? 13 A. Chris Stark. 14 Q. Did you ever discuss Emily Forsythe 15 with Mr. Stark? 16 A. Yes. 17 Q. But that was after the following 18 Tuesday, when she was told not to go to 19 Atlanta? 20 A. No. Before then. 21 Q. Okay. But it was before Thursday, 22 when you talked to Mr. Shaffer-Figueroa? 23 A. Yes. 24 Q. How many times did you talk with 25 Mr. Stark?</p>

<p>53</p> <p>1 seriously, or more seriously than a complaint 2 of unlawful discrimination? 3 MS. MILLER: I'm going to, 4 again, object that she is not a 30(b)(6) 5 witness, speaking on behalf of the 6 company. And so, to base that on her 7 experience -- 8 Q. You can base it on your experience, 9 only. 10 A. I take all complaints equally 11 serious. 12 Q. All complaints of alleged unlawful 13 conduct, equally seriously? 14 A. I take all complaints equally 15 seriously? 16 MS. MILLER: Yeah. To the 17 extent that we're creating this 18 distinction between "lawful" and 19 "unlawful," and you're asking the 20 witness to draw legal conclusions about 21 which complaints were of unlawful 22 conduct, versus lawful, I object to that. 23 MR. GOODMAN: No. I'm not. 24 BY MR. GOODMAN: 25 Q. You've been in -- you've been in HR</p>	<p>55</p> <p>1 A. No. 2 Q. You never heard of that? 3 A. I believe it was mentioned in my 4 conversation with Emily and Lynn yesterday. 5 MS. MILLER: And I'm going to 6 object to any conversation that you had 7 with me and Lynn, as -- you don't need to 8 speak to the contents of those 9 conversations. They are privileged. 10 Q. Do you know if anybody spoke before 11 the Tuesday Ms. Forsythe was told not to go to 12 Atlanta, about -- to Mr. McKnight, about his 13 saying any of that to Ms. Forsythe? 14 A. No. 15 Q. Did Mr. Shaffer-Figueroa tell you, 16 or disclose to you that he had -- he actually 17 had a conversation after the complaint of 18 sexual harassment of Ms. Forsythe was 19 received, about that sexual harassment? 20 MS. MILLER: Object to the 21 form. 22 A. Yeah. Can you clarify? 23 Q. Yeah. Mr. Shaffer-Figueroa 24 disclosed to you that he had actually talked 25 to Emily Forsythe about her complaint of</p>
<p>54</p> <p>1 for 10 or 15 years. Correct? 2 A. Yes. 3 Q. You know when something is alleging 4 a violation of one of the discrimination laws, 5 and when it's just alleging unfairness. 6 Correct? 7 A. Typically, I need all of the 8 information to make a determination on whether 9 or not something is unlawful or lawful -- or 10 unlawful, or not related to a law. 11 Q. But, ultimately, you can make the 12 distinction -- you could make the distinction, 13 as a human resources professional; can't you? 14 A. I make the distinction after I have 15 the information. I don't make a distinction 16 based on an initial complaint. 17 Q. Right. But there is a distinction 18 to be made, once you have necessary facts. 19 Correct? 20 A. Yes. 21 Q. Are you aware of the allegation that 22 Mr. Woody told Ms. Forsythe that he wanted to 23 hire three -- three male colleagues -- former 24 colleagues of his, at Wal-Mart, and to remove 25 Ms. Forsythe from her supervision?</p>	<p>56</p> <p>1 sexual harassment. Not only seen her written 2 complaint? 3 A. Correct. 4 Q. And did he share any of the details 5 of his conversation with Ms. Forsythe, about 6 that sexual harassment with you? 7 A. I'm sure he did. But I don't 8 remember the specifics of that conversation. 9 Q. All right. As a woman, how did that 10 make you feel? 11 A. My gender doesn't drive any 12 reasoning behind, you know -- I don't think I 13 took into consideration -- I know I didn't 14 take into consideration, my gender, in my 15 conversation with Trevor. 16 Q. Well, a woman would be particularly 17 sensitive to having a man, without her 18 consent, rubbing -- coursing his hand down her 19 chest. Correct? 20 MS. MILLER: I'm going to 21 object to your calling for speculation, 22 about how women globally would feel about 23 something. 24 Q. Okay. Well then, you, as a woman. 25 That's something that you can relate to, the</p>

<p style="text-align: right;">69</p> <p>1 is merit or not; or if there is partial merit, 2 or complete merit. Correct? 3 A. It's a very broad statement. 4 Whether or not you talk to the complainant 5 really depends on the investigation. And if 6 you have a written complaint, you may not 7 necessarily need to have a conversation with 8 the person, until after you've done additional 9 due diligence. 10 Q. Okay. Can you -- yeah. Can you 11 complete an investigation of discrimination, 12 or retaliation of any kind, without actually 13 ever talking to the complainant? 14 A. I'm sure there is a circumstance 15 where that could happen. 16 Q. But, in practice, you always talk to 17 the complainant. Correct? 18 A. Again, "always" is a very definitive 19 word. But, in most cases, yes. 20 Q. And you can't readily think of a 21 circumstance in which you would not talk to 22 the complainant, at some point in an 23 investigation, of unlawful discrimination, or 24 unlawful retaliation. Correct? 25 MS. MILLER: Objection. Asked</p>	<p style="text-align: right;">71</p> <p>1 Q. Right. But once you hear from, say, 2 the target of the complaint, that often 3 generates more questions for the complainant; 4 doesn't it? 5 A. Most of the time. 6 Q. Yes. Because it's -- you know, 7 basically, them replying to the response to 8 their complaint. 9 A. In most circumstances, yes. 10 Q. Okay. Did Mr. McKnight contact you, 11 at any time in August or September 2019, about 12 getting -- getting Ms. Forsythe removed from 13 his supervision? 14 A. I know he and I had a conversation, 15 but I don't remember who initiated the 16 conversation. But, related to her 17 performance. Not necessarily, removal of her 18 from her position. 19 Q. Okay. Because -- and I say that 20 because, she alleges that he told her that he 21 was -- that he had already started working 22 with HR representatives to remove plaintiff 23 from his supervision. 24 So you are saying that you did 25 not, in fact, have a conversation with him</p>
<p style="text-align: right;">70</p> <p>1 and answered. She's responded to this 2 question in several different ways. 3 A. No. I think there is a situation 4 where you may not need to talk to the 5 complainant. 6 Q. And is that when -- would that be 7 when a supervisor, or other employee, admitted 8 unlawful discrimination or retaliation? 9 A. I think it depends on the additional 10 circumstances of the investigation. That one 11 piece would not drive whether or not I would 12 talk to a complainant. 13 Q. All right. And what -- in what 14 circumstance would a professional human 15 resource representative not talk to a 16 complainant about the complainant -- the 17 complainant's claim of an unlawful 18 discrimination or retaliation? If you can 19 think of any. 20 A. Yeah. I think if you have all of 21 the details in writing, you likely do not need 22 to reach out to the complainant to get 23 additional information, if you feel like you 24 have enough information to start your 25 investigation.</p>	<p style="text-align: right;">72</p> <p>1 about removing her from his supervision. 2 Correct? 3 A. I don't, specifically, remember the 4 details of the conversation, and whether or 5 not that topic was brought up. 6 Q. Okay. Are you changing your 7 testimony? Now you're saying it may have been 8 brought up? Before you said, it wasn't 9 brought up? Which is it? 10 A. The conversation that he and I had 11 was related to her performance. Whether or 12 not it was brought up that he would like her 13 removed from his supervision, I don't 14 specifically remember. 15 Q. Okay. What did he say about her 16 performance to you, in that conversation? 17 A. It was around her communication 18 style. And that there was some complaints 19 from others that her communication was not 20 good. 21 Q. Okay. What does the word "around" 22 mean? You said "it was around her 23 communication style." What does that mean? 24 A. Related to her communication style. 25 I mean, nothing specific.</p>

<p style="text-align: right;">105</p> <p>1 Wayfair had determined that it was going to 2 say, "Well, she actually resigned the prior 3 Thursday?" 4 MS. MILLER: She's not 5 refusing. I'm directing her not to 6 answer as to the contents of the 7 conversation with counsel present. 8 And we can take it to a judge. 9 BY MR. GOODMAN: 10 Q. And this -- was this -- have you 11 ever, in your time at Wayfair, as an HR 12 professional, thought that a position that 13 Wayfair was taking was inappropriate? 14 A. So, "inappropriate," I struggle with 15 that word. I think there are situations that 16 Wayfair -- 17 Q. [Inaudible] 18 A. I think Wayfair has made decisions 19 that I don't necessarily agree with. I have a 20 comfortable relationship with my supervisor 21 and manager that I can have those 22 conversations if I don't agree with an 23 approach. 24 Q. Okay. And was the disposition of 25 the employment of Ms. Forsythe one of those</p>	<p style="text-align: right;">107</p> <p>1 EXAMINATION BY MS. MILLER: 2 Q. Did you conduct the investigation 3 into Ms. Forsythe's complaint of harassment by 4 Mr. McDole? 5 A. No. 6 Q. Did you conduct the investigation 7 into Ms. Forsythe's complaint of retaliation 8 by Mr. McKnight? 9 A. No. 10 Q. When someone under you is conducting 11 an investigation, do you expect them to 12 discuss every detail of the investigation with 13 you? 14 A. No. 15 Q. And were you the decision-maker when 16 it came to accepting Ms. Forsythe's 17 resignation? 18 A. No. 19 MS. MILLER: Okay. 20 MR. GOODMAN: I can't hear you 21 Emily. Please repeat the question. 22 MS. MILLER: All of them? Or 23 the final one? 24 MR. GOODMAN: The final one, 25 sorry.</p>
<p style="text-align: right;">106</p> <p>1 instances, during your employment, prior to 2 your going to the bank? 3 A. That conversation was with Mike and 4 Marcie. 5 Q. Okay. Because Marcie, in addition 6 to being on the conversation, was your boss. 7 Correct? 8 A. Yes. Marcie is my manager. 9 MR. GOODMAN: I'm going to take 10 a couple minutes break. See if I have 11 any more questions. 12 THE VIDEOGRAPHER: The time is 13 11:47 a.m.. We're going off the record. 14 (Short break.) 15 THE VIDEOGRAPHER: The time is 16 11:49 a.m.. We are going back on the 17 record. 18 MR. GOODMAN: Ms. Mitchell, 19 Ms. Miller, Ms. Smith; I'm passing the 20 witness. 21 MS. MILLER: Thank you. So, I 22 have a couple of questions for you, 23 Ms. Smith. Just to clarify a few things 24 on the record. 25</p>	<p style="text-align: right;">108</p> <p>1 MS. MILLER: I asked if she was 2 the decision-maker when it came to 3 accepting Ms. Forsythe's resignation. 4 THE WITNESS: And I said no. 5 MS. MILLER: Those are all the 6 questions I have. 7 FURTHER EXAMINATION BY MR. GOODMAN: 8 Q. All right, Ms. Smith. So you expect 9 your subordinates to give you less than 10 complete explanations of their investigation? 11 A. No. But I did not expect them to 12 provide every single detail, based on the 13 investigation. We typically talk about a 14 general overview. 15 Q. Right. And you ask them questions 16 to make sure that they have hit all the spots 17 with regard to professional conduct of 18 investigations. Correct? 19 A. I asked them questions to ensure I 20 understand the situation, and if they are 21 unable to answer, will ask -- direct them to 22 go back and get additional information. 23 Q. All right. And, also, so assure 24 quality control. Correct? 25 A. I don't know that I would</p>